

No. 83-1753

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In the Supreme Court

OF THE

United States

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OCTOBER TERM, 1983

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DORA JANE HORTON,  
Administratrix with Will Annexed of the Estate of  
J. W. EHRLICH, et al.,  
*Petitioner,*

VS.

CITY AND COUNTY OF SAN FRANCISCO,  
THE STATE OF CALIFORNIA, THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA IN AND  
FOR THE COUNTY OF SAN FRANCISCO,  
BYRON ARNOLD,  
*Respondents.*

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**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF CALIFORNIA**

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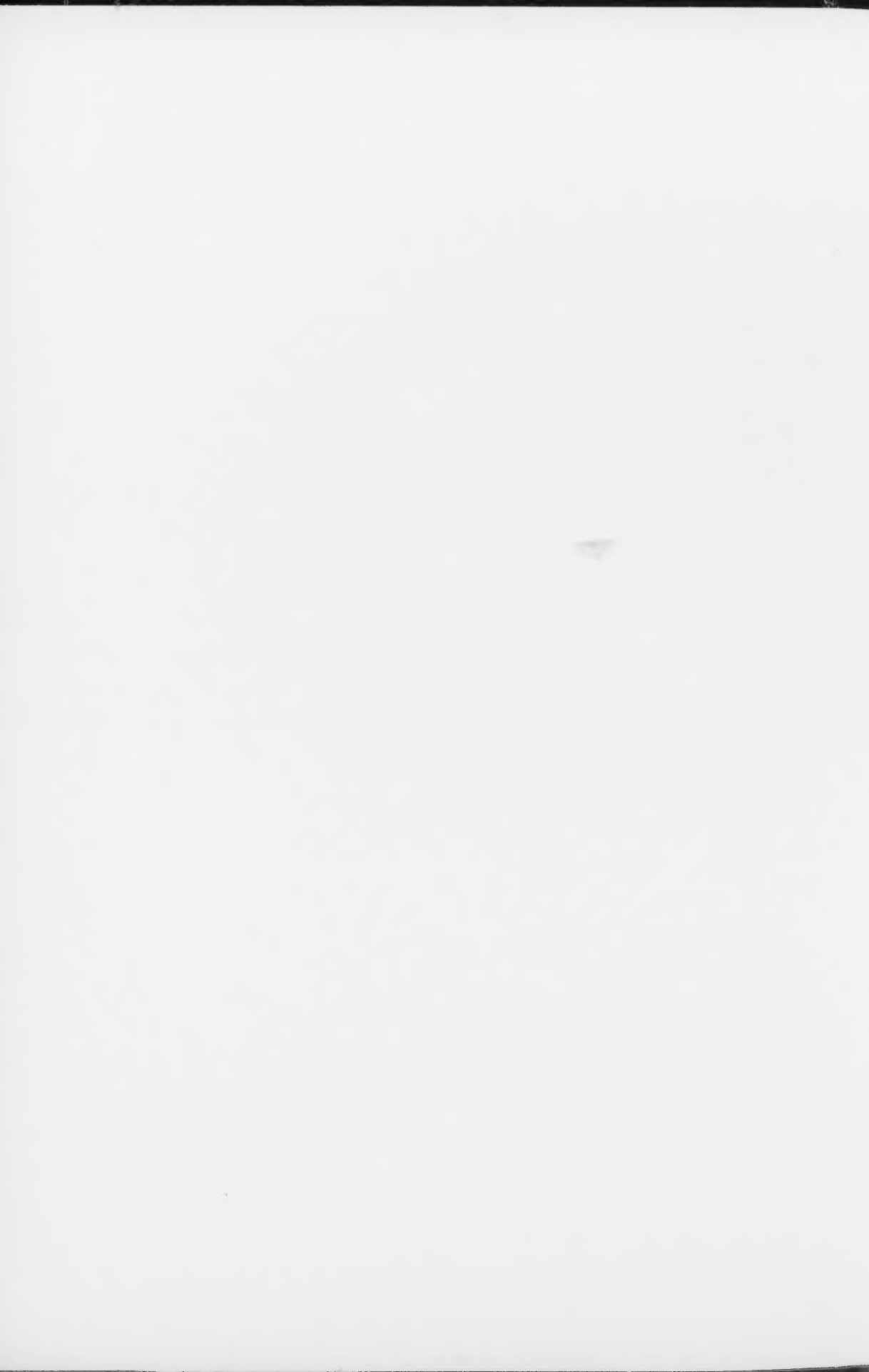
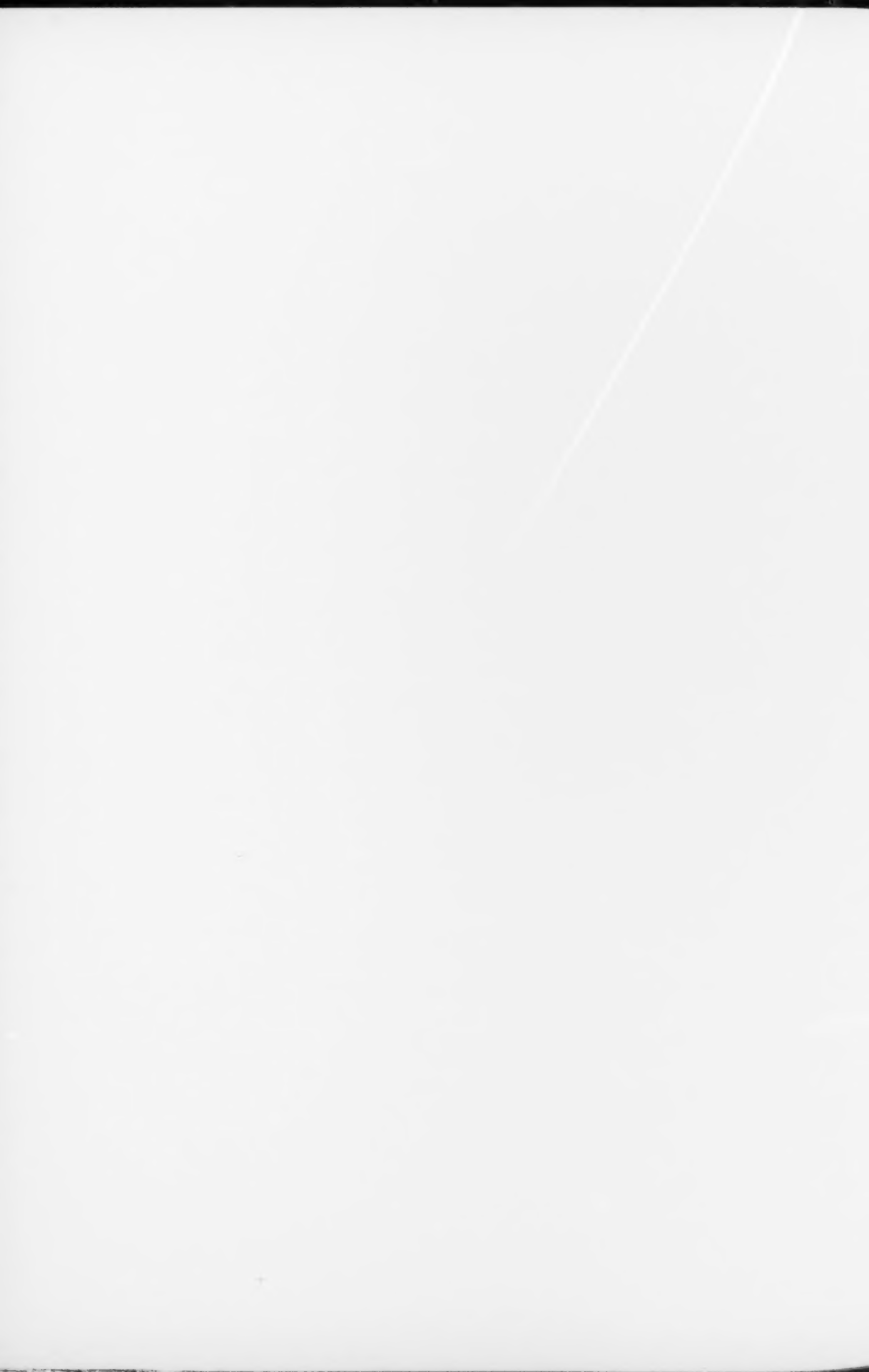


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SUPPLEMENTAL BRIEF IN SUPPORT OF  
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SUPREME COURT OF CALIFORNIA

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Petitioner respectfully files  
this Supplemental Brief in support of  
her Petition for Writ of Certiorari and  
prays that the Writ be granted.

INTRODUCTION

This case involves the failure of judge THE HONORABLE BYRON ARNOLD (ret'd.) who did not comply with a mandatory statutory provision of the California Probate Code. This failure resulted in a large loss to the estate and, therefore, to the class which the statute intended to protect.

Petitioner contends that:

1. There is no judicial immunity when a judge contravenes the laws created by the legislature thereby rendering the proceeding before him void;
2. Although there is complete judicial immunity when a judge is involved in the "delicate process of deciding civil and criminal matters on their merits," no such judicial immunity attaches where a judge is not given any discretion in the matter but is required to follow a mandatory duty imposed upon him by statute;

3. It is a denial of equal protection if a judge were allowed to apply the same statutory provision unequally between persons similarly situated;

4. It is a denial of equal protection to grant judicial immunity when a judge contravenes the laws created by the legislature.

SUPPLEMENTAL ARGUMENT

This Term saw a considerable relaxation in the strict doctrine of judicial immunity when the Supreme Court stated in Pulliam v. Allen, 44 S.Ct. Bull. (CCH) p. B2658 (U.S. May 14, 1984) (No. 82-1432) that judicial immunity is not a bar to prospective injunctive relief or an award of attorneys fees against a judicial officer.

The question, however, whether a judge can be held liable for violating a mandatory statutory provision, was not

discussed in Pulliam supra.

In this context, the case of National Black Police Association v. Velde (1983) 712 F.2d 569 in which the Supreme Court denied a petition for Writ of Certiorari (Docket No. 83-1254) becomes relevant. In National Black Police Assoc. supra. which concerned a former Attorney General and three other former federal officials, the Court of Appeals held that government officials are not protected from being sued if their actions "violate clearly established statutory and constitutional rights." The Justices of the Supreme Court, without comment, rejected the officials arguments that they cannot be sued for failing to cut off federal aid to police departments that discriminated against blacks and women.



As petitioner has argued in her brief in support of petition for a writ of certiorari, a judge is a "government official", and if his act violates a clearly established statutory or constitutional right he should be held liable in the same manner as any other public official.

In this case petitioner and the other beneficiaries of the Ehrlich estate had a clear statutory right (by virtue of California Probate Code Section 541) to have a bond set in an amount not less than the value of personal property of the deceased. Petitioner and the other beneficiaries also had a clearly established constitutional right (by virtue of the equal protection clause of the United States Constitution, Fourteenth Amendment, Section 1) to have the laws of the State

of California applied equally to all persons similarly situated. The judge violated this clearly established statutory and constitutional right of the beneficiaries, and therefore, should not be permitted to claim immunity. The public entities i.e. the State of California and the City and County of San Francisco should be held, jointly and severally liable, for the damage proximately caused petitioner by respondent Superior Court's breach of duty in failing to comply with mandatory statutory provisions both by virtue of the doctrine of respondent superior California Government Code Section 815.6 (cited in earlier brief).

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted that this

petition for writ of certiorari should  
be granted.

DATED: June 29, 1984

Respectfully submitted,  
WILLIAMS, MARTINET & RABIN

By Paul E. Rabin  
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